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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91202219
Party	Plaintiff Eat Right Foods Ltd.
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Date	10/09/2012
Attachments	Corrected Transcript R. Douglas-Clifford with Exhibits_Part3.pdf ( 33 pages ) (4870090 bytes )

1 MR. MAUCH: Let's go off the record.

2 (Recess taken.)

3 MR. MAUCH: Okay. Rebecca, we're back on the  
4 record.

5 Q If you could get Exhibits 1, 2, 3 and 16 in  
6 front of you, and can you explain to me first what  
7 Exhibits 1, 2 and 3 are?

8 A Exhibits 1, 2 and 3 are copies of our  
9 trade -- EATRIGHT trademark for class 5, 29 and 30.

10 Q So those are the actual registration  
11 certificates?

12 A Those are the registration certificates, yes.

13 Q And how about Exhibit 16?

14 A This is the application for the EATRIGHT  
15 AMERICA mark of products, including class 5, 29 and  
16 30.

17 Q On Exhibit 16, on the LeVille application,  
18 there is also classes 16 and 25; correct?

19 A Yes.

20 Q Are you opposing those classes?

21 A No.

22 Q So you're opposing classes 5, 29 and 30?

23 A Yes.

24 Q So on page two of Exhibit 16, can you turn to  
25 that, please.

1 A Yes, I can.

2 Q Under "Goods and Services," do you see that?

3 A Yes.

4 Q It first shows "International Class 5"; do  
5 you see that?

6 A Yes.

7 Q And then it has the description text, and it  
8 lists a number of goods; do you see that?

9 A Yes, I do.

10 Q So can you go through those goods for me and  
11 explain to me how your company, EATRIGHT AMERICA --  
12 I'm sorry -- your company, Eat Right Foods, makes  
13 goods that are related to the goods listed under  
14 "International Class 5" for the LeVille application?

15 A Eat Right Foods was in discussion with a  
16 company in New Zealand called Healtheries. They  
17 wanted to take some contract manufacturing on our  
18 behalf.

19 Healtheries manufactures supplements, as well  
20 as food products, cookies, crackers, cereals with  
21 respect to International Class 5. And the primary  
22 reason for opposing any products in International  
23 Class 5 is that EATRIGHT is the only mark for EATRIGHT  
24 Class 5 products in the United States.

25 Q So, in particular though, the -- let's start

1 with nutritional supplements.

2 Does Eat Right Foods use or intend to use its  
3 mark on nutritional supplements?

4 A We intend to use our EATRIGHT mark on  
5 bioavailable nutrient products which are, in essence,  
6 products which have integral, within the actual  
7 products, the additional supplements which you would  
8 actually otherwise purchase as a supplement.

9 Q And you also just testified to negotiations  
10 with a contract manufacturer regarding supplements; is  
11 that correct?

12 A Yes. That particular company makes foods,  
13 supplements. They actually also make a range of  
14 beverages too.

15 Q And were your negotiations regarding  
16 potential plans to use the EATRIGHT mark on  
17 supplements?

18 A Not supplements, per se, but that was not  
19 ~~discounting it~~ <sup>discounted</sup> either. It was an arrangement and  
20 negotiation for them to undertake all of our contract  
21 manufacturing and potential manufacturing for us.

22 Q So is it fair to say that you could expand  
23 into the -- Eat Right Foods can expand into the area  
24 of nutritional supplements?

25 A Oh, absolutely.

1 Q Moving on to dietary supplements.

2 Same question: Does Eat Right Foods use its  
3 mark on or intend to use its marks on dietary  
4 supplements?

5 A We could use our EATRIGHT mark on supplements  
6 and quite possibly into the future.

7 Q And you've currently been working on  
8 bioavailable nutrients --

9 A Yes.

10 Q -- which would relate to dietary supplements?

11 A Which would relate to the class which has  
12 been called dietary supplements.

13 Q And turning next to the herbal supplements,  
14 same question.

15 A And same answer applies.

16 Q And how about homeopathic supplements?

17 A Exactly the same, same argument or  
18 information applies.

19 Q And mineral supplements?

20 A Again, yes.

21 Q Next one is multivitamins.

22 A Yes, very much so.

23 Q And explain for me how Eat Right Foods  
24 intends -- uses or intends to use its mark on  
25 multivitamins?



1           A    Well, again, with the contract or the  
2   potential contract manufacturing arrangement with  
3   Healtheries, or for that matter any other company  
4   similar to Healtheries for that EATRIGHT mark.  
5   Because they are a manufacturer of, you know,  
6   vitamins, multivitamins that our EATRIGHT mark could  
7   or will be used on those products too.

8           Q    And are you aware of other companies that use  
9   their mark, their same mark, on the various  
10  supplements listed in International Class 5, as well  
11  as the same mark on the medicated and nutritional  
12  dietary goods/food products marketed and sold by  
13  Eat Right Foods?

14          A    Yes. There are a number of companies here in  
15  the states, and they're also interestingly doing a  
16  range of ~~making free~~ <sup>free from</sup> foods, as well as supplements.

17                In one particular instance, there's just a  
18  group of food products and supplements that they're  
19  actually also manufacturing and that they -- my  
20  understanding is that they also have registration for  
21  both food and supplement product.

22          Q    With the same mark on both of those goods?

23          A    With the same mark on both of those goods.

24          Q    Let's turn now down to International  
25  Class 29. The first listed good under International

1 Class 29 is "Frozen prepared and packaged vegetable  
2 based entrees."

3 Does Eat Right Foods use or intend to use --  
4 intend to expand its use onto frozen prepared and  
5 packaged vegetable based entrees?

6 A We have been in discussion with a company who  
7 does a variety of prepared vegetable entrees, yes.

8 Q What is the name of that company?

9 A Talley's. It is a global company, and they do  
10 vegetables, frozen vegetables. They do ~~eight~~ <sup>other</sup>  
11 products. They own Affco meats, ~~fish~~ <sup>too.</sup>

12 Q Is it fair to say that Eat Right Foods could  
13 expands its use of the mark, the use of the EATRIGHT  
14 mark to vegetable entrees?

15 A Absolutely. We've also been involved with a  
16 company called ~~Heinz Watties~~. <sup>Heinz Watties is owned</sup>  
17 Heinz is used by the  
18 Heinz empire for those same products.

19 Q How about the next goods, "frozen  
20 vegetables"?

21 A Same. We've been in discussions with --  
22 particularly in respect to ~~Talley's~~ <sup>Talley's,</sup> in respect to the  
23 use of the EATRIGHT mark on frozen vegetables, frozen  
24 peas, beans, corn, you name it.

25 Q And the next good, "food product soup"?

A We presented our EATRIGHT mark on a soup

1 product to Walmart, and we have also presented our  
2 EATRIGHT mark as a potential mark on soup products for  
3 Heinz Watties.

4 Q And are you aware of other companies that  
5 have used their mark, their trademark, on the goods  
6 listed in International Class 29 on the LeVille  
7 application, as well as on the food products that Eat  
8 Right Foods markets and sells?

9 A I have seen, yes, those on other  
10 applications, yes.

11 Q So same mark on the goods here --

12 A Yeah.

13 Q -- in the application in Exhibit 16 and the  
14 goods that you market and sell as Eat Right Foods?

15 A Yes.

16 Q And then turning to the last class,  
17 International Class 30, there's only one type of goods  
18 listed in that. That's salad dressings?

19 A Yes.

20 Q Does Eat Right Foods use or intend to use or  
21 expand its use of its mark on salad dressings?

22 A We intend to expand into a variety of food  
23 products which can -- could include salad dressings,  
24 yes.

25 Q And are you aware of other companies that use



1 a trademark on both salad dressings and on the goods  
2 and food products marketed and sold by Eat Right  
3 Foods?

4 A Yes.

5 Q So one trademark on both salad dressings and  
6 on --

7 A Crackers and, yes, other medicated and  
8 health-adapted products, and cookies and cakes, yes.

9 Q Okay. You can put Exhibits 1, 2, 3 and 16  
10 aside.

11 Have there been any instances of actual  
12 confusion between the EATRIGHT AMERICA mark used and  
13 applied for by Mr. LeVille and Nutritional Excellence  
14 Company and the EATRIGHT mark used by Eat Right Foods?

15 A Yes.

16 Q Can you describe those instances of actual  
17 confusion?

18 A Whole Foods Market made a payment which was  
19 intended for EATRIGHT AMERICA, and that payment  
20 actually went through to our distributor on our  
21 behalf, you know, effectively for Eat Right Foods'  
22 benefit.

23 It was not for an invoice that we had or our  
24 distributor in this particular region had actually  
25 created.

1 Q So was a payment intended for EATRIGHT  
2 AMERICA that Whole Foods Market sent to you at Eat  
3 Right Foods?

4 A Or intended to be sent to me, yes.

5 Q And when you learned of this, what did you  
6 do?

7 A I e-mailed Mr. LeVille, and I copied my  
8 counsel, Mr. James Martin, and also Mr. LeVille's  
9 counsel at the time, which was Mr. Tristan Fall, and  
10 explained that we had received a payment that was  
11 intended for Nutritional Excellence for EATRIGHT  
12 AMERICA.

13 (Document marked Exhibit 38  
14 for identification.)

15 MR. MAUCH: Exhibit 38 is a document with the  
16 Bates stamp ERFL13.

17 Q Rebecca, do you recognize this Exhibit 38?

18 A Yes; I wrote it.

19 Q And is this the e-mail that you were  
20 referring to a moment ago?

21 A Yes, it is.

22 Q And this is from the -- the e-mail is Eat  
23 Right Food -- ~~eatright@extra.co.nz?~~  
*eatright@xtra.co.nz?*

24 A Yes.

25 Q That's your e-mail address?

1 A Yes.

2 Q And explain to me one more time why --  
3 what -- what the nature of this e-mail is?

4 A This is -- this was a payment made by Whole  
5 Foods Market intended, my understanding, for EATRIGHT  
6 AMERICA, and it was paid to <sup>our</sup>~~a~~ distributor intended for  
7 Eat Right Foods.

8 Q And did Mr. LeVille ever respond to this  
9 e-mail?

10 A No, he didn't.

11 Q Did his counsel ever respond?

12 A No, he didn't. In fact, they did not respond  
13 to any of our communications until just before he  
14 filed in a proceeding against Mr. Joel Fuhrman.

15 Q Any other instances -- instances of actual  
16 confusion other than the one you just described?

17 A Yes, there's been a couple of consumer  
18 instances of confusion. There was one instance where  
19 <sup>they</sup>~~you~~ asked whether we produced some Nutrarian Food  
20 Bars, snack bars, and also had a reference at the  
21 bottom of it to EATRIGHT AMERICA, even though it was  
22 actually addressed to Eat Right Foods.

23 (Document marked Exhibit 39  
24 for identification.)

25 MR. MAUCH: Exhibit 39 contains the Bates

1 stamp ERFL14.

2 Q Do you recognize Exhibit 39, Rebecca?

3 A Yes, I do.

4 Q What is this exhibit?

5 A So this is an e-mail to one of our e-mail  
6 addresses, which are ~~inquiries at Eat Right Co.~~ <sup>is enquiries@eatright.co.nz,</sup> and  
7 it is inquiring about ~~Nitrituria~~ <sup>Nutritarian</sup> Food Bars.

8 Q And what are ~~Nitrituria~~ <sup>Nutritarian</sup> Food Bars?

9 A These are food bars ~~this were produced/are~~  
10 produced by EATRIGHT AMERICA.

11 Q And does -- does your company Eat Right Foods  
12 produce ~~Nitrituria~~ <sup>Nutritarian</sup> Food Bars?

13 A No, they do not.

14 Q And are there any other references or  
15 indications on this e-mail of confusion between your  
16 company and EATRIGHT AMERICA?

17 A Yes. At the very bottom it says "P.S.,"  
18 postscript, "We are passionate about nutrition, e.g.,"  
19 and then it shows the website  
20 ~~eatrightamerica.com/whybecomenitrituria~~ <sup>eatrightamerica.com/whybecomeanutritarian</sup>

21 Q So what's your understanding of what this  
22 person writing this e-mail to inquiries at  
23 eatright.co.nz? What's your understanding of this?

24 A My understanding is that they somehow thought  
25 that we were -- that Eat Right Foods was somehow



1 connected to EATRIGHT America, that either EATRIGHT  
2 AMERICA was a subsidiary of Eat Right Foods or was an  
3 endorser of Eat Right Foods. I don't know.

4 Don't know the exact, but they clearly, to  
5 me, thought there was some connection.

6 Q Any other instances of actual confusion other  
7 than the two you just mentioned?

8 A There was another instance where I received  
9 an e-mail from another company in Nelson in  
10 New Zealand, and they were asking whether we had some  
11 connection to EATRIGHT United Kingdom.

12 Q And do you have any connection with EATRIGHT  
13 United Kingdom?

14 A No. EATRIGHT mark is registered in the  
15 United Kingdom, but not...

16 Q And any other instances other than those  
17 three?

18 A There was an EATRIGHT promotion which was  
19 being undertaken by Whole Foods Market, and it was  
20 part of the Whole Foods Market America's Healthiest  
21 Grocery Store. They were putting or creating a  
22 healthy eating table which was displaying, to my  
23 understanding, EATRIGHT AMERICA and Engine 2 Diet  
24 books and DVDs, and our products were requested to be  
25 on that table. But luckily the bakery buyer saw the



1 difference and pulled them off. Pulled the order  
2 actually, yeah.

3 Q So this was another instance of Whole Foods  
4 Market confusing your company with Mr. LeVille's  
5 company?

6 A Yes, this -- that promotion was only intended  
7 for EATRIGHT AMERICA and Engine 2, but our products  
8 were going to go there and be on that particular  
9 table, if it wasn't for a buyer who we had dealt with  
10 for a number of years who picked it up. Otherwise,  
11 the store manager would have just let it happen.

12 Q Have you taken steps to protect the strength  
13 of the EATRIGHT brand?

14 A Oh, yes, absolutely.

15 Q Describe those steps to me.

16 A We have undertaken lots and lots of policing  
17 of our EATRIGHT mark that's used in commerce here in  
18 the states. We've also undertaken vigorous  
19 proceedings against Safeway in the use of EATING  
20 RIGHT. And with a final agreement, which details I  
21 can't disclose. But actually subsequent to that  
22 particular agreement, we had to undertake additional  
23 policing and cease and desist letters and other steps  
24 with respect to that particular company and its use of  
25 a confusing mark, a mark which was confusingly similar

1 to ours.

2 Q And are you aware of any other marks for  
3 EATRIGHT or a similar -- similar set of words on food  
4 products?

5 A No. EATRIGHT, as a mark, is the only mark  
6 which is registered in America in the United States in  
7 the Patent and Trademark Office. It is the only mark  
8 which is registered for EAT and RIGHT in Class 5.

9 There are, from memory, three companies who  
10 have tag lines with multiple words which include the  
11 words "eat" and <sup>"right"</sup>~~"write"~~ in various parts of that tag  
12 line, but they -- but they are used somehow in  
13 connection with -- with food products.

14 I haven't seen those tag lines actually in  
15 the marketplace being used on food products. So I  
16 believe that we are -- continue to be the sole  
17 registered or sole user of the trademark EAT/RIGHT on  
18 food products.

19 Q And for those companies you just described  
20 that use -- that have a registered tag line that  
21 includes the word EATRIGHT on food, have you -- have  
22 you opposed or cancelled any of those registrations?

23 A No. I have policed those particular  
24 companies. And as I said, for all intents and  
25 purposes, I have not seen those marks because they are

RDC 1 just tag lines<sup>not</sup> used in a confusingly similar manner.

2 However, EATRIGHT AMERICA most definitely is  
ADC 3 a very confusing ~~situation~~ trademark on food products.

4 Q So that actually was going to be my very next  
5 question.

6 Why have you opposed the application for  
7 EATRIGHT AMERICA when you do not oppose the tag line  
8 registrations?

9 A EATRIGHT AMERICA is the only other  
10 application for the words or the dominant part of  
11 "eat" and "right" beginning of the -- of the trademark  
12 for food products, which is in existence here in the  
13 states.

14 It is also the way it's used in commerce as  
15 identically -- identical in its appearance, its sound,  
16 and its meaning, and its own variety of a multitude of  
17 food products of over hundreds, at least currently in  
18 some stores here. And it, to me, was just purely a  
19 copy of our EATRIGHT trademark when it was actually  
20 used in the mid-Atlantic region, and/or in the  
21 Southwest region of Whole Foods Market, and/or here in  
22 California, and/or the Pacific Northwest. All of the  
23 areas which we have at some particular stage or are  
24 supplying.

25 Q So in -- if I understand your testimony



RDC 1 correctly, you believe there's a great ~~likely~~ <sup>likelihood</sup>  
2 confusion based on the EATRIGHT AMERICA mark or as the  
3 other tag line marks, because there's -- it's a tag  
4 line in a variety -- with a variety of other words  
5 included, and there's not that confusion between your  
6 company and the source of those marks?

7 A Yes. The other situation is that with  
8 EATRIGHT AMERICA, there has been confusion. There's  
9 never been any other confusion with any other company  
10 with respect to the words or the trademark EATRIGHT.

11 (Document marked Exhibit 40  
12 for identification.)

13 MR. MAUCH: Exhibit 40 contains the Bates  
14 range ERFL19.

15 Q Do you recognize Exhibit 40?

16 A Yes. This is a letter from the attorneys  
17 representing Price Chopper.

18 Q And what is Price Chopper?

19 A Price Chopper is a chain of retail stores,  
20 and this was referring to Price -- to a letter I had  
21 sent to Price Chopper, for Price Chopper to cease and  
22 desist the use of EATRIGHT products and EATRIGHT  
23 coupons. In particular, on their online shop or  
24 online website which were intended for an Eating  
25 Right, Safeway Eating Right product.

1 Q So you sent a cease and desist letter, and  
2 this is their response?

3 A This is their response, yes.

4 Q Agreeing to no longer use the mark?

5 A It's saying that they have removed from the  
6 website the references to the Eating Right products.

7 (Document marked Exhibit 41  
8 for identification.)

9 MR. MAUCH: Exhibit 41 contains the Bates  
10 range ERFL20.

11 Q Do you recognize Exhibit 41, Rebecca?

12 A Yes.

13 Q What is it?

14 A It's a fax that I wrote to Hy-Vee, which is a  
15 retail chain of stores.

16 Q And that's the same store -- same chain of  
17 stores that we discussed earlier?

18 A Yes, with Josephine.

19 Q And what is Exhibit 41?

20 A So this is a letter to the CEO, managing  
21 director of Hy-Vee, and/or to the Hy-Vee legal  
22 department, and it's requesting that store to cease  
23 and desist from any use of the EATRIGHT in connection  
24 with their Live Healthy campaign.

25 Q So is this an instance of Eat Right Foods



RDC 1 attempting to police the <sup>use</sup>~~script~~ of its mark?

2 A Very much so.

3 Q If you'd actually turn back to Exhibit 16  
4 again. I'm sorry. I know you put it away. That's  
5 the application by Mr. LeVille for EATRIGHT AMERICA;  
6 do you have that in front of you?

7 A Yes, I do.

8 Q And you see where it lists the word mark  
9 that's been applied for where it states EATRIGHT  
10 AMERICA? Do you see that?

11 A Yes, I do.

12 Q And do you see that there's a space between  
13 the words EAT and RIGHT on this application?

14 A I do.

15 Q And does that conform with your experience  
16 with the use of the mark in commerce?

17 A Not the use in commerce as EAT and RIGHT  
18 joined together and then TM.

19 Q And even with this space in between the  
20 word -- the space between the words EAT and RIGHT in  
21 the application, does that space, in your opinion, in  
22 any way decrease the similarity between the applied  
23 for mark by Mr. LeVille and the mark owned by Eat  
24 Right Foods?

25 A No; the dominant words are still "Eat" and

1 "Right." In fact, the words EATRIGHT.

2 Q And how about the existence of the word  
3 "AMERICA" as the third word in the applied for mark?

4 A The use in commerce is often just EATRIGHT  
5 standalone or EATRIGHT and another add-on. Not just  
6 AMERICA. It's got a multitude of additional add ones.

7 Q And in the application itself, where -- does  
8 the existence of that third word AMERICA, regardless  
9 of how it's used in commerce, does that third word  
10 make the mark less confusing or less similar to your  
11 mark, in your opinion?

12 A No, because that implies that this is  
13 actually Eat Right Company based here in America.  
14 Somehow it hasn't -- we are associated -- the EATRIGHT  
15 registered mark is -- has an American subsidiary, has  
16 an affiliate with EATRIGHT AMERICA. It only adds to  
17 the confusion. It doesn't detract from the confusion.

18 MR. MAUCH: Okay. Let's go off the record.

19 (Recess taken.)

20 MR. MAUCH: Q. Rebecca, do you have an  
21 understanding of the -- the category or type of goods  
22 that Mr. LeVille and his company, Nutritional  
23 Excellence, market and sell to the company?

24 A They are a company which says that they are  
25 involved as a nutrition company. It's dietary

1 related. They are a -- also health conscious.

2 Q Would you have an understanding of what type  
3 of consumer Mr. LeVille and his company, Nutritional  
4 Excellence, try to market and sell their products and  
5 services to?

6 A They're trying to sell to a person who is  
7 interested in food, who is nutritionally minded, who  
8 is looking at the detail of the nutrient, quality of  
9 the ingredients of food in particular.

10 Q And what's that -- what is your understanding  
11 of the goods sold by Nutritional Excellence and the  
12 type of consumer they're seeking to market to? What  
13 is that understanding based on?

14 A Actually having visited multiple stores and  
15 having sold our products in the market for 11 years  
16 and having done consumer research, it is evident that  
17 basically Mr. LeVille's customers are our customers.

18 We have the identical sales channels. We  
19 both market to consumers who shop at Whole Foods  
20 Market, who are passionately interested in their  
21 health, passionately interested in what they're  
22 putting in their mouth, passionately interested in  
23 their -- their weight, their health, the status of  
24 their health, yeah.

25 ---CONTINUED ON THE NEXT PAGE TO INCLUDE JURAT---

1 MR. MAUCH: Off the record.

2 (WHEREUPON, the deposition ended

3 at 12:57 p.m.)

4 ---oOo---

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## J U R A T

I, REBECCA DOUGLAS-CLIFFORD, do hereby  
certify under Penalty of Perjury that I have  
read the foregoing transcript of my  
deposition taken on September 12, 2012; that  
I have made such corrections as appear noted  
herein in ink, initialed by me; that my  
testimony as contained herein, as corrected,  
is true and correct.

DATED this 8th day of October, 2012,  
at Nelson, New Zealand, ~~California~~.

  
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SIGNATURE OF WITNESS



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CERTIFICATE OF REPORTER

I, ANDREA M. IGNACIO HOWARD, hereby certify that the witness in the foregoing deposition was by me duly sworn to tell the truth, the whole truth, and nothing but the truth in the within-entitled cause;

That said deposition was taken in shorthand by me, a Certified Shorthand Reporter of the State of California, and was thereafter transcribed into typewriting, and that the foregoing transcript constitutes a full, true and correct report of said deposition and of the proceedings which took place;

That I am a disinterested person to the said action. I am not disqualified as specified in Rule 28 of the Federal Rules of Civil Procedure.

IN WITNESS WHEREOF, I have hereunto set my hand this 21st day of September, 2012.



ANDREA M. IGNACIO HOWARD, RPR, CCRR, CLR, CSR No. 9830

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I N D E X

DEPOSITION OF REBECCA DOUGLAS-CLIFFORD

EXAMINATION

BY MR. MAUCH

PAGE

4

E X H I B I T S

EXHIBIT

PAGE

Exhibit 1 EATRIGHT Trademark Principal  
Register; 1 pg.

15

Exhibit 2 EATRIGHT Reg. No. 3,694,692;  
1 pg.

15

Exhibit 3 EATRIGHT Reg. No. 3,694,693;  
1 pg.

15

Exhibit 4 EATRIGHT Healthy Food; 2 pgs.

19

Exhibit 5 EATRIGHT Product Range; 1 pg.

20

Exhibit 6 EATRIGHT Cookies; 2 pgs.

21

Exhibit 7 EATRIGHT Giant Afghan; 1 pg.

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Exhibit 8 EATRIGHT Cho-Holics Cookie;

24

1 pg.

Exhibit 9 EATRIGHT Crackers; 1 pg.

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Exhibit 10 EATRIGHT Super-Seeded Cracker;

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1 pg.

1                    E X H I B I T S    (Continued.)

2

3	EXHIBIT		PAGE
4	Exhibit 11	EATRIGHT Cakes; 1 pg.	28
5	Exhibit 12	EATRIGHT Kings Fruit Cake; 1 pg.	28
6	Exhibit 13	EATRIGHT Christmas Specials;	30
7		1 pg.	
8	Exhibit 14	EATRIGHT 100% Organic; 2 pgs.	30
9	Exhibit 15	EATRIGHT Slow Dried Organic	31
10		Apple; 1 pg.	
11	Exhibit 16	Trademark Snap Shot Prosecution	34
12		History for Informal Notice;	
13		5 pgs.	
14	Exhibit 17	EATRIGHT ANDI Score 61; 1 pg.	39
15	Exhibit 18	EATRIGHT Raw Walnuts; 1 pg.	41
16	Exhibit 19	EATRIGHT Whole Almonds; 1 pg.	43
17	Exhibit 20	EATRIGHT ANDI Top 10 for	44
18		Produce; 1 pg.	
19	Exhibit 21	ANDI Top 30 Super Foods; 1 pg.	46
20	Exhibit 22	Organic Fuji Apples; 1 pg.	47
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Int. Cl.: 30

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 3,045,314

Registered Jan. 17, 2006

TRADEMARK  
PRINCIPAL REGISTER



EAT RIGHT FOODS LIMITED (NEW ZEALAND  
CORPORATION)  
7 KOTUA PLACE STOKE  
NELSON, NEW ZEALAND

FOR: ORGANIC AND ALLERGY SENSITIVE  
CAKES AND COOKIES, IN CLASS 30 (U.S. CL. 46).

FIRST USE 8-1-2001; IN COMMERCE 10-1-2001.

OWNER OF NEW ZEALAND REG. NO. 676367,  
DATED 10-2-2003, EXPIRES 10-2-2010.

THE COLOR(S) GREEN, GOLD AND WHITE IS/  
ARE CLAIMED AS A FEATURE OF THE MARK.

THE COLOURS GREEN AND GOLD APPEAR AS  
A RECTANGULAR BACKGROUND ON WHICH  
WHITE LETTERING IS PLACED.

SER. NO. 78-481,574, FILED 9-10-2004.

MICHELLE S. WISEMAN, EXAMINING ATTOR-  
NEY



# United States of America

United States Patent and Trademark Office



**Reg. No. 3,694,692** EAT RIGHT FOODS LIMITED (NEW ZEALAND LIMITED LIABILITY COMPANY)  
Registered Oct. 13, 2009 7 KOTUA PLACE  
NELSON, NEW ZEALAND

**Int. Cl.: 5** FOR: MEDICATED CONFECTIONERY, FOOD PREPARATIONS ADAPTED FOR MEDICAL PURPOSES, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

**TRADEMARK** FIRST USE 8-1-2001; IN COMMERCE 10-1-2001.  
**PRINCIPAL REGISTER**

OWNER OF NEW ZEALAND REG. NO. 676368, DATED 10-2-2003, EXPIRES 3-27-2010.

THE COLOR(S) GREEN, YELLOW AND WHITE IS/ARE CLAIMED AS A FEATURE OF THE MARK.

OWNER OF U.S. REG. NO. 3,045,314.

THE MARK CONSISTS OF A RECTANGULAR BACKGROUND WHICH IS IN THE COLORS GREEN AND YELLOW WITH THE WORDING "EATRIGHT" APPEARING IN WHITE.

SEC. 2(F).

SER. NO. 77-470,886, FILED 5-9-2008.

EDWARD NELSON, EXAMINING ATTORNEY



*David J. Kappas*

Director of the United States Patent and Trademark Office



# United States of America

United States Patent and Trademark Office



**Reg. No. 3,694,693** EAT RIGHT FOODS LIMITED (NEW ZEALAND LIMITED LIABILITY COMPANY)  
Registered Oct. 13, 2009 7 KOTUA PLACE  
NELSON, NEW ZEALAND

**Int. Cl.: 29** FOR: SNACK MIX CONSISTING PRIMARILY OF PROCESSED FRUITS, PROCESSED NUTS  
AND/OR RAISINS; ORGANIC NUT AND SEED-BASED SNACK BARS; FRUIT-BASED  
TRADEMARK SNACK FOOD, FRUIT-BASED ORGANIC FOOD BARS; FRUIT-BASED ORGANIC FOOD  
PRINCIPAL REGISTER BARS, ALSO CONTAINING NUTS AND SEEDS, IN CLASS 29 (U.S. CL. 46).

FIRST USE 8-1-2001; IN COMMERCE 12-3-2002.

OWNER OF NEW ZEALAND REG. NO. 789065, DATED 11-13-2008, EXPIRES 5-12-2018.

THE COLOR(S) GREEN, YELLOW AND WHITE IS/ARE CLAIMED AS A FEATURE OF THE MARK.

OWNER OF U.S. REG. NO. 3,045,314.

THE MARK CONSISTS OF A RECTANGULAR BACKGROUND WHICH IS IN THE COLOURS GREEN AND YELLOW AND THE WORDING "EATRIGHT" APPEARING IN WHITE.

SEC. 2(F).

SER. NO. 77-471,111, FILED 5-10-2008.

EDWARD NELSON, EXAMINING ATTORNEY



*David J. Kybas*

Director of the United States Patent and Trademark Office





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"We received rave reviews of your Rice & Spice cookie, with some people naming it as the best product at the Food Show." - **Bio-Gro New Zealand**



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